

EXPLANATORY NOTE

Localism Act 2011 and the Standards Regime

INTRODUCTION

1. Localism Act 2011

- 1.1 The main elements of the new Council standards regime are contained within Chapter 7 and Schedule 4 of the Localism Act.
- 1.1 The intention is that the new standards regime will be more cost effective, efficient, less formal, less time consuming and more proportionate.
- 1.2 One significant change made by the Localism Act will be the abolition of Standards for England, which will cease to exist after 31 March 2012.
- 1.3 DCLG has stated that Standards for England will cease to regulate Member Standards as from 31 January 2012.
- 1.4 Both The Relevant Authorities (General Principles) Order 2001, which sets out the principles which currently govern the conduct of Members and Co-opted Members of relevant authorities in England and Police Authorities in Wales; and The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159), which prescribes the model code of conduct to apply to Members of relevant authorities, will be revoked.
- 1.5 The changes to the standards regime will come into force on 1 July 2012.

LOCALISM ACT: THE STANDARDS REGIME

2. New Duty and Arrangements

- 2.1 The Council, under Section 27(1) of the Localism Act, “must promote and maintain high standards conduct by Member and Co-opted Members” of the Council.
- 2.2 In discharging the duty mentioned in paragraph 2.1 above, the Council must adopt a code dealing with the conduct that is expected of Members and Co-opted Members of the Council when they are acting in that capacity.¹
- 2.3 The Council must also have in place arrangements under which:

- a. allegations can be investigated, and

¹ Section 27(2) Localism Act 2011

- b. decisions on allegations can be made.²

2.4 Independent Person: The arrangements referred to above, must include provision for the appointment by the Council of at least one independent person –

- a. whose views are to be sought, and taken into account, by the Council before it makes its decision on an allegation that it has decided to investigate; and

- b. whose view may be sought –

- i) by the Council in relation to allegations that are not subject to investigation; and
- ii) by a Member/Co-opted Member of the Council if the person's behaviour is subject to an allegation.

2.5 A person cannot be an Independent Person for the purposes of the Localism Act if at any time during the 5 years ending with the appointment, the person was:

- i) a Member/Co-opted Member or officer of the Council; or
- ii) a relative or close friend of anyone mentioned in i) above.³

2.6 The appointment of a Independent Person(s) must be by public advert, an application process being adopted and the appointment by a majority of the Members of the Council.

2.7 Secretary of State guidance is awaited on the definition of an Independent Person under the Localism Act. On the strict literal interpretation of this provision, all current independent members of the Council's Standards Committee would fall outside the definition of "Independent Person" under the Localism Act.

3. The Code of Conduct

3.1 The Council must ensure that the Member Code of Conduct, when viewed as a whole, deals with the conduct that is expected of Members and Co-opted Members of the Council when they are acting in that capacity" ("the Member Code of Conduct").

3.2 The Council is permitted to either revise its existing Members' Code of Conduct or adopt a new code of conduct as a replacement.

3.3 The Localism Act requires the Member Code of Conduct to be consistent with the following principles⁴:

² Section 28(6) Localism Act 2011

³ Section 28(8) Localism Act 2011

⁴ Section 28(1) Localism Act 2011

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

3.4 The Localism Act further requires the new Member Code of Conduct to include the arrangements the Council considers appropriate with regards the registration and disclosure of –

- pecuniary interests; and
- interests other than pecuniary interests.⁵

4. Disclosure and Registration of Members Interests

4.1 Members and Co-opted Members of the Council have a legal obligation⁶ to notify the Council’s Monitoring Officer of any “disclosable pecuniary interest” for the purposes of inclusion within the register of Interests.

4.2 “Disclosable pecuniary interest”: This is defined under Section 30(3) Localism Act and includes:

- a. an interest of the Member/Co-opted Member; or
- b. an interest of:
 - i. the Member’s/Co-opted Member’s spouse or civil partner;
 - ii. a person with whom the Member/Co-opted Member is living as husband and wife; or
 - iii. a person with whom the Member/Co-opted Member is living as if they were civil partners.

and the Member/Co-opted Member is aware that other person has the interest.

4.3 Further guidance on the definition of a “disclosable pecuniary interest” is awaited from the Secretary of State.

4.4 Notification Period: A new (or re-elected) Member of the Council must notify the Monitoring Officer of any “disclosable pecuniary interest” (or any unregistered “disclosable pecuniary interest” if the case of a re-elected Member) before the end of 28 days beginning with the day on which the persons becomes a Member/Co-opted Member of the Council.

⁵ Section 28(2) Localism Act 2011

⁶ Section 30(1) Localism Act 2011

4.5 There is provision for Regulations to be made requiring the Monitoring Officer to establish and maintain a Register of Interests of Members and Co-opted Members of the Authority. Regulations can make provision:

5. Register of Interests

5.1 The Council's Monitoring Officer is required to establish and maintain a register of interests of the Members and Co-opted Members of Council.

5.2 Where an interest is disclosed by a Member/Co-opted Member, the Monitoring Officer must record that interest (irrespective of whether it is a "disclosable pecuniary interest") in the register of interests.

5.3 The Register of Interests must be available for inspection and must be published on the Council's website.

6. Disclosing interests at Council meetings

6.1 Unless otherwise registered in the register of interests (as referred to above), a Member/Co-opted Member attending a Council meeting (i.e. meeting of the Council, or any committee, sub-committee, joint committee or sub-joint committee of the Council), must disclose that "disclosable pecuniary interest(s)" to the meeting.

6.2 A Member/Co-opted Member does not have to disclose the nature of the disclosable pecuniary interest if it is sensitive. A sensitive disclosable pecuniary interest is one which if disclosed could lead to the Member/Co-opted Member or a person connected with him/her, being subjected to violence or intimidation.⁷

6.3 Where an unregistered disclosable pecuniary interest is disclosed at a meeting, the relevant Member/Co-opted Member must notify the Monitoring Officer of the disclosable pecuniary interest within 28 days of the date of the meeting in question.

6.4 Participation at Meetings: Where a Member/Co-opted Member discloses an unregistered disclosable pecuniary interest (whether it be sensitive or not) at a Council meeting (as described at paragraph 6.1 above), then the Member/Co-opted Member must not:

- i. participate or further participate in any discussion of the matter at the Council meeting;
- ii. participate in any vote, or further vote, taken on the matter at the Council meeting.

(Unless otherwise granted a dispensation by the Council).

7. Failure to disclose Interests/Sanctions

7.1 A person commits an offence if, without reasonable excuse, he/she fails to register or disclose a "disclosable pecuniary interest" as required or knowingly or recklessly

⁷ Section 32 Localism Act

provides information in relation to a “disclosable pecuniary interest” that is false or misleading.⁸

- 7.2 A person who commits an offence, as outlined in paragraph 7.1, shall upon summary conviction be liable to a fine not exceeding £5,000.00 and may be disqualified for a period not exceeding 5 years from being or becoming a Member or Co-opted Member of a Council.
- 7.3 The Localism Act removes the power of the Council to suspend a person being Member/Co-opted Member.
- 7.4 Any criminal proceedings shall be brought by or on behalf of the Director of Public Prosecutions and may be brought within 12 months of the date evidence existed that was both in the knowledge and to the opinion of the prosecutor, sufficient to warranted proceedings. There is however a three year limitation period that applies to all conduct.

8. Standards Committee

- 8.1 There is no specific requirement under the Localism Act to retain the Council’s Standards Committee. However, the Standards Committee Working Group is of the view that a Standards Committee is required to:
- a. Assist the Council discharge its duty to promote and maintain high standards conduct by Member and Co-opted Members of the Council; and
 - b. Ensure appropriate and effective arrangements are in place to:
 - i. Investigate allegations into conduct;
 - ii. Make decisions in relation to allegations against conduct;
 - iii. Monitor standards issues and matters;
 - iv. Deal with requests for dispensations;
 - v. Consider and approve training; and
 - vi. Evaluate and assess applications received for the position of Independent Person.
- 8.2 There is no restriction on the number of Standards Committees or Sub-Committees that the Council can establish.

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⁸ Section 34 Localism Act 2011